

CALIFORNIA COASTAL COMMISSION

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W15d

Prepared August 20, 2003 (for September 10, 2003 hearing)

To: Commissioners and Interested Persons

From: Diane Landry, District Manager
Dan Carl, Coastal Planner

Subject: **Santa Cruz County LCP Major Amendment Number 2-03 Part 1 (Second Units – AB 1866)** Proposed major amendment to the Santa Cruz County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's September 10, 2003 meeting to take place at the Eureka Inn, 518 Seventh Street, in Eureka.

Summary

Santa Cruz County is proposing to change several certified Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning code) sections in response to recent legislative changes regarding second units (per AB 1866). AB 1866 amended Government Code Section 65852.2 to change the process for the review of second unit applications. Most significantly, AB 1866 requires that second unit applications in residentially designated areas received after July 1, 2003 be considered by local governments "ministerially without discretionary review or a hearing." The restriction on public hearings does not extend to the Coastal Commission.

The County proposes several processing changes to bring the LCP into conformance with respect to the review process for second units on residential properties. These changes are primarily procedural, focused on removing hearing requirements, and including parameters for appealable versus non-appealable second units. The County also proposes an unrelated (to second units specifically) clean-up change to remove an LCP section referring to the manner in which structure height is calculated.

The changes proposed are mostly straight-forward and generally narrowly focused in response to AB 1866 requirements. There are a few areas where minor clarification is necessary (making explicit certain implicit requirements, fixing typos, and making minor coastal zone-specific clarifications). More substantively, the proposed changes delete the requirement that there be adequate public services to serve second units (such as the need for water and sewer will-serve commitments). In an area where water and sewer facilities are not limitless, and in particular an impending water crisis threatens to severely curtail additional development, it is not appropriate to delete this requirement. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public services are further curtailed, take services that are directed by the LCP to higher priority uses in times of limited supply; (2) draw on public services even if there aren't adequate services available; (3) be approved, and not built, leading to any number of "stale" approvals not necessarily responsive to current conditions in this and other respects. Removal of the public service demonstration requirement directly conflicts with LUP policies requiring demonstration of service.



California Coastal Commission
September Meeting in Eureka

Staff: D.Carl Approved by:

SCO LCPA 2-03 Part 1 2nd units (AB 1866) stfrpt 9.10.2003.doc

In order to address these public service concerns (and the other minor issues), modifications are suggested to maintain the public service text and to make small changes designed to ensure that the proposed text is consistent with the certified LUP.

With the identified modifications, staff recommends that the Commission find that the proposed LCP amendment is consistent with and adequate to carry out the policies of the LUP. As so modified, staff recommends that the Commission approve the LCP amendment.

Staff note

This proposed LCP amendment was filed on August 4, 2003. Pursuant to Coastal Act Section 30513, the Commission must act on it within 60 days of the day it was filed; 60 days from August 4, 2003 is October 3, 2003 (i.e., after the September hearing but before the October hearing). Coastal Act Section 30513 provides that the amendment is deemed approved and certified by the Commission if action is not taken within the applicable time frame. However, Coastal Act Section 30517 allows the Commission to extend, for good cause, the 60-day time limit for a period not to exceed one year. Therefore, if the Commission does not act on this amendment at the September 2003 hearing, then the Commission will need to extend the deadline for Commission action or have the ordinance be approved and certified as submitted. Thus, in the event the Commission chooses to not take action on this amendment at the September hearing, Staff further recommends that the Commission extend the deadline for Commission action by one year (i.e., to October 3, 2004). The following motion is provided only for this contingency (and is not applicable otherwise):

Motion. I move that the Commission extend the 60-day time limit to act on Santa Cruz County Local Coastal Program Major Amendment Number 2-03 Part 1 by a period of one year.

Staff Recommendation. Staff recommends a **YES** vote. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

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I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment only if modified. The Commission needs to make 2 motions in order to act on this recommendation.¹

1. Denial of Implementation Plan Major Amendment Number 2-03 Part 1 as Submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (1 of 2). I move that the Commission **reject** Part 1 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County.

Resolution to Deny. The Commission hereby **denies** certification of Part 1 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan as submitted by Santa Cruz County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

2. Approval of Implementation Plan Major Amendment Number 2-03 Part 1 if Modified

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (2 of 2). I move that the Commission **certify** Part 1 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan if it is modified as suggested in this staff report.

Resolution to Certify with Suggested Modifications. The Commission hereby **certifies** Part 1 of Major Amendment Number 2-03 to the Santa Cruz County Local Coastal Program Implementation Plan if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible

¹ Note that the motions and resolutions refer to “Part 1 of Major Amendment Number 203.” The reason for this is that this amendment request is part 1 of a two part LCP amendment submitted by the County. In other words, LCP amendment number 2-03 is in two parts. The other part of the amendment, regarding rezoning a specific property to the timber production zone, is also separately before the Commission at the September hearing (extension of the deadline for action only).



mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.

II. Suggested Modifications

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the County of Santa Cruz accepts each of the suggested modifications within six months of Commission action (i.e., by September 10, 2004), by formal resolution of the Board of Supervisors, the corresponding amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

1. Modify Proposed Changes to IP Section 13.10.681(b).

- (a) 100-Foot Notice: Insert the text “(not including roads)” where noted on page 2 of exhibit C.
- (b) Coastal Commission Reference: Add the text “Coastal” where noted on page 2 of exhibit C.
- (c) Extra Subsection Reference: Delete the text “(ii)” where noted on page 2 of exhibit C.
- (d) Misspelled “Shall”: Replace the text “hall” with the text “shall” where noted on page 2 of exhibit C.

2. Modify Proposed Changes to IP Section 13.10.681(c).

- (a) Add “or”: Insert the text “or” where noted on page 3 of exhibit C.
- (b) Add “and”: Insert the text “; and” where noted on page 4 of exhibit C.
- (c) Applicability: Delete the text “, when applicable” where noted on page 4 of exhibit C.

3. Modify Proposed Changes to IP Section 13.10.681(d).

- (a) Coverage: Insert the text “, when combined with existing lot coverage and gross floor area,” where noted on page 5 of exhibit C.
- (b) Other Accessory Uses: Insert the text “subject to all applicable requirements of the underlying zone district” where noted on page 6 of exhibit C.
- (c) Service Requirements: Do not delete subsection 13.10.681(d)(8) as proposed. Deleted text noted on page 6 of exhibit C shall be reestablished.



- 4. Modify Proposed Changes to IP Section 13.10.323(b) Site and Structural Dimensions Charts (Single and Multi Family):** Move the text “1-story” to the “maximum number of stories” column, and delete the text “/” and the text “max” where noted on pages 26 and 27 of exhibit C.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Proposed LCP Amendment

1. Government Code (and AB 1866) Second Unit Requirement Background

Signed by the Governor on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 “ministerially without discretionary review or a hearing.” (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to “approve or disapprove the [second unit] application ministerially without discretionary review.” (Government Code Section 65852.2(b)(1))
- 3) Specifies that “[n]othing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.” (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.

Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public



notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

2. Description of Proposed LCP Amendment

The amendment would change Sections 13.10.681, 13.10.322(b), and 13.10.323 of the County's LCP IP. Section 13.10.681 is the residential second unit (specific) section of the IP, Section 13.10.322(b) is the residential use charts, and Section 13.10.323 specifies development standards in the residential districts. Specifically, the amendment:

- (1) Modifies Section 13.10.681 (subsections (b), (c), and (d)) to remove the public hearing requirement for second unit applications, identify the process for noticing and reviewing second unit applications, removes the requirement that a public service commitment be demonstrated for second units, and makes other minor changes;
- (2) Modifies Section 13.10.322(b) to indicate that second units don't require a public hearing and are to be considered at a level 3 review level (administrative review); and
- (3) Modifies Section 13.10.323 to remove text referring to the calculation of structure heights.

See exhibit A for the Board of Supervisor's resolution, exhibit B for the Board staff report, and exhibit C for the proposed changes.

3. Effect of Changes Proposed

Applications for second units in the coastal zone will be processed ministerially without public hearings. Noticing for interested parties and those properties within 100 feet of the second unit property will be required. Approvals of second units in the appealable zone will continue to be appealable to the Coastal Commission.

The changes will potentially make it easier and quicker (and less costly in permit application fees) for applicants to gain approvals for second units in residential zones. Some of this depends on the manner in which administrative reviews will be undertaken at the County, and the length of time that these will take. The specifics of the County's internal review process in this respect are unknown at this time. Nevertheless, the lack of a hearing requirement should reduce the absolute amount of processing time associated with a second unit application because it removes a major step.

The removal of the requirement that public service commitments be demonstrated would further reduce the number of steps for an applicant. It would also lead to second units for which it is uncertain if there are adequate public services. This in turn could lead to scarce public service supply being directed to second units as a class of development (since they would be the only class of development to which this



requirement wouldn't apply). Depending on the amount of second units that were eventually approved, the changes could lead to increased use of public services, hastening the time when supply, particularly water, is depleted.

The change to remove descriptive text referring to the manner in which structure heights are calculated will have no effect because the LCP already defines structural height in the same manner (IP section 13.10.700-H).

B. Consistency Analysis

1. Standard of Review

The standard of review for the proposed modifications to the County's LUP is consistency with the Coastal Act. The standard of review for proposed modifications to the County's IP is that they must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel by parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified LCP LUP.

2. LUP Consistency Requirement

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the Land Use Plan. The County's LUP protects visual and community character, and requires demonstration of sewer and water capacity to serve proposed development. It also distinguishes between urban and rural development, and directs development to developed areas best able to accommodate it. Quality design, respective of the built and natural environment, is expected. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.

3. Consistency Analysis

The changes proposed are mostly straight-forward and generally narrowly focused in response to AB 1866 requirements. The proposed text does, however, include a few changes that might result in inappropriate development inconsistent with the LUP if not modified. Fortunately, these portions of the proposed text are easily clarified so that public service commitment requirements are retained, and minor clarification are made (typos and minor coastal zone-specific clarifications). Individual issues (and changes that need to be made) are discussed more specifically below.

Public Service Commitment

The LUP requires that applicants for new development demonstrate that they have a commitment from sewer and water service providers to serve the proposed development (LUP Policies 7.18.2 and 7.19.1). For second units, this is implemented by IP Section 13.10.681(d)(8) (i.e., the section proposed to be deleted – see exhibit C). The proposed changes delete this requirement for second units. Specifically, LUP



Policies 7.18.2 and 7.19.1 state:

LUP Policy 7.18.2 Written Commitments Confirming Water Service Required for Permits. Concurrent with project application require a written commitment from the water purveyor that verifies the capability of the system to serve the proposed development. Projects shall not be approved in areas that do not have a proven, adequate water supply. A written commitment is a letter from the purveyor guaranteeing that the required level of service for the project will be available prior to the issuance of building permits,.... The County decision making body shall not approve any development project unless it determines that such project has adequate water supply available.

LUP Policy 7.19.1 Sewer Service to New Development. Concurrent with project application, require a written commitment from the service district. A written commitment is a letter, with appropriate conditions, from the service district guaranteeing that the required level of service for the project will be available prior to issuance of building permits, The County decision making body shall not approve any development project unless it determines that such project has adequate sewage treatment plant capacity.

In addition, LUP Policy 2.2.3 reserves public works capacity for priority uses in the coastal zone. Residential development is the lowest priority use in the County LCP. LUP Policy 2.2.3 states in applicable part:

LUP Policy 2.2.3 Reservation of Public Works Capacities for Coastal Priority Uses. In the Coastal Zone, reserve capacity in existing or planned public works facilities for Coastal Priority Uses. ...

In an area where water and sewer facilities are not limitless, and in particular an impending water crisis threatens to severely curtail additional development, it is not appropriate to delete this will-serve requirement. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public services are further curtailed, take services that are directed to higher priority uses in times of limited supply by the LCP; (2) draw on public services even if there aren't adequate services available; (3) be approved, and not built, leading to any number of "stale" approvals not necessarily responsive to current conditions in this and other respects. Removal of the public service demonstration requirement directly conflicts with LUP policies requiring demonstration of service and reserving capacity for priority uses, and cannot be found consistent with the LUP for these reason. A modification is suggested to retain this requirement (see suggested modification 3).

Lot Coverage and FAR

Proposed Section 13.10.681(d)(3) refers to a second unit not being allowed to exceed lot coverage and floor area ratio requirements. This text could be read to indicate that the second unit, when evaluated alone, needs to meet these requirements, irrespective of the existing first unit's coverage and floor area ratio. Such an interpretation would allow for much denser development that exceeds maximum mass and scale requirements to the detriment of community character and coastal viewsheds. This is easily rectified



by specifying that the coverage and floor area ratio standards are cumulative. In other words, the attributes of the second unit must be added to the attributes of the first and together must be less than the maximum coverage and floor area ratio standards. See suggested modification 3.

Coastal Zone Findings

Proposed Section 13.10.681(c)(6) indicates that required coastal development permit findings must be made “when applicable” (see page 4 of exhibit C). Because such findings are always applicable, and to avoid potential internal LCP consistency that could affect coastal zone resources, a modification is suggested to strike the “when applicable” caveat (see suggested modification 2).

One-Hundred Foot Noticing

Proposed Section 13.10.681(b) text specifies a 100-foot noticing requirement for second unit applications (see page 2 of exhibit C). The 100-foot noticing requirement omits the California Code of Regulations requirement that such 100-foot measurement exclude roads. To make this LCP text consistent with the regulations, and to ensure that the appropriate persons are noticed, a clarification is suggested in this regard (see suggested modification 1).

Accessory Structures

Proposed Section 13.10.681(d)(7) indicates that certain accessory structures may be allowed (see page 6 of exhibit C). Although it is implied that the applicable regulations of the underlying zone district would remain applicable to such accessory structures, it is not explicit in this section. To err on the conservative side, a modification is suggested to make this implicit requirement explicit. See suggested modification 3.

Clarifications/Other

In addition to those issues detailed above, there are instances where the language of the proposed text needs to be clarified, and typographic errors fixed, to ensure its clear implementation consistent with the LUP. See suggested modifications 1, 2, and 4.

Note Regarding Second Units on Agricultural Lands

It should be noted that the proposed amendment text includes several references to second units on agricultural lands (see exhibit C). Second units on agricultural lands are a separate issue, and a separate LCP amendment request, that is before the Commission at the September 2003 hearing (LCP amendment request 1-02 Part 2; agenda item W15b). The changes are shown in the County’s submittal because LCP amendment request 1-02 Part 2 was approved by the County Board last year and previously submitted to the Commission. These changes, and issues related to them, are not a part of this amendment request, and exhibit C shows these changes deleted. Commission staff is separately recommending denial of LCP amendment request 1-02 Part 2 because it would inappropriately lead to future growth in what is now a rural agricultural area to the detriment of those rural agricultural resources inconsistent with certified LUP, and inconsistent with the Coastal Act. Note that AB 1866 (and amended Government Code Section 65852.2 et seq regarding second units) applies to residential zoning districts, and it does not apply to agricultural districts.



Conclusion

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. There are portions of the proposed IP text where there are inconsistencies and/or other issues that would affect the proposed text's ability to carry out LUP policies, and ultimately to ensure that coastal resources are protected as directed by the LUP. Fortunately, there are modifications that can be made to address the identified issues.

In conclusion, if so modified in all of the ways outlined here according to the cited modification texts, then the IP as amended by the proposed amendment, and as further modified as suggested above and in the cited modification texts, is approved as being consistent with and adequate to carry out the certified LUP as amended.

C. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The County in this case exempted the proposed amendment under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

